

AMRICK LALL v. SOWBAIAVATI

[A.C.J. (Pawan Ahmad J.) September 10, 1973]

[Malacca — Civil Appeal No. 8 of 1973]

Family Law — Maintenance — Arrears of maintenance — Practice.

In this appeal the appellant applied to set aside an order of maintenance made against him for the payment of maintenance to the respondent at a sum of \$100 per month as from November 1, 1968 (although the respondent had asked for maintenance from 1.11.69). It transpired that the appellant had remarried, and had two children from his other wife.

Held: (1) if the fact that the appellant had a wife and two children to support had been disclosed to the court, this would have materially affected the quantum of the maintenance awarded to the respondent;

(2) the court had failed to consider the practice as set out in the English case of *Luscombe v. Luscombe*⁽¹⁾ of not enforcing orders of maintenance for more than a year backwards.

Cases referred to:-

- (1) *Luscombe v. Luscombe* [1962] 1 W.L.R. 313.
- (2) *Pilcher v. Pilcher* [1956] 1 W.L.R. 298, 302.

CIVIL APPEAL.

S. C. Navarednam for the appellant.

A. C. Vohrah for the respondent.

Pawan Ahmad J.: In this appeal the appellant seeks to set aside the order of maintenance made by the Magistrate's Court on 30th November, 1972 whereby he was ordered to pay maintenance to the respondent at a sum of \$100 per month as from 1st November 1968. It has now transpired that since the separation of the respondent from the appellant, the appellant has remarried and now has another wife, besides the respondent, and two children to support. Nowhere in the complaint or at the hearing before the Magistrate's Court has it been stated that the appellant has two children by his other wife. I am of the opinion that if this fact was disclosed to the court, it would have materially affected the quantum of the maintenance awarded to the respondent.

Another unsatisfactory feature of the case is that in her complaint the respondent asked for arrears of maintenance as from 1st November 1969, but in his order the learned magistrate has awarded her maintenance as from 1st November 1968. I am unable to understand why the award has been made for a period not asked for by the respondent. There is also no indication on the record as to whether the case of *Luscombe v. Luscombe*⁽¹⁾ was ever considered in awarding the maintenance. At page 315 Ormerod L.J. said:

"It has been submitted to us that in enforcing payment of arrears of maintenance under a decree of this kind, although there may be no rule of law governing the question, and although in law the wife may be entitled to enforce payment of the whole of the arrears available, a practice has grown up in the Divorce Division that arrears shall not be enforced for a period of more than twelve months; and indeed that practice appears to have received sanction in *Pilcher v. Pilcher*.⁽²⁾ Lord Merriman P., in his judgment, said this:

'There is another consideration which I think should apply, and that is that, not, I think, as a matter of law but as a matter of practice, it is usually considered by courts which are asked to enforce orders of this sort, and it certainly is the practice of this Division when men are brought up before its courts for committal in respect of maintenance orders, that there should be a time limit retrospectively. The custom in this Division is not to enforce arrears for more than a year backwards.'

A For the aforesaid reasons I allowed the appeal and set aside the order of the magistrate made on 30th November, 1972. I ordered that the matter be remitted for retrial before another magistrate. I made no order as to costs.

Appeal allowed. Retrial ordered.

B Solicitors: *Suleiman C. Navarednam & Co.; Vohrah & Tan Chee Lan & Co.*

C**NAJAR SINGH v. GOVERNMENT OF MALAYSIA & ANOR.**

[O.C.J. (Abdul Hamid J.) September 25, 1973]

[Kuala Lumpur — Civil Suit No. 758 of 1972]

D *Administrative Law — Dismissal of police officer — No formal inquiry held — Proceedings taken under Public Officers (Conduct and Discipline) (General Orders, Chapter D) Regulations 1969 — Regulations made by Director of Operations under Emergency (Essential Powers) Ordinance — Federal Constitution, Arts. 132(1) and 135(2).*

E *Emergency Legislation — Whether regulations invalid on ground of inconsistency with Art. 135 of the Federal Constitution.*

The plaintiff, who was a police officer, was detained under an order issued by the Minister of Home Affairs. Whilst in detention he received a statement in writing sent by the Police Force Commission pursuant to General Order 30(2) of the Public Officers (Conduct and Discipline) (General Orders, Chapter D) Regulations, 1969, requiring him to show cause why he should not be dismissed from the Police Force. The plaintiff sent a written reply to the Police Force Commission. There was no formal enquiry held and the plaintiff was dismissed from the Police Force by the Police Force Commission. The plaintiff sought, *inter alia*, a declaration that his dismissal was void.

F **Held:** (1) the Public Officers (Conduct and Discipline) (General Orders, Chapter D) Regulations, 1969, are valid, although the effect may be to deprive an officer of the guarantee embodied under Article 135(2) of the Federal Constitution;

(2) if the dismissal of the officer was made by the appropriate Service Commission empowered under the Federal Constitution, it was perfectly valid and effective, even though no enquiry was held.

G Cases referred to:-

- (1) *Ridge v. Baldwin* [1964] A.C. 40.
- (2) *Eng Keock Cheng v. Public Prosecutor* [1966] 1 M.L.J. 18.
- (3) *Terrell v. Secretary of State for the Colonies* [1953] 2 Q.B. 482.
- (4) *Rex v. Stratford on Avon Corporation* (1844) 6 Q.B. 682.
- (5) *Reg. v. Darlington School Governors* (1870) L.R. Ch. 489.
- (6) *Dean v. Bennett* (1851) 13 Beav. 117.
- (7) *Willis v. Childe* (1615) 11 Co. Rep. 936.

CIVIL SUIT.

N. A. Marjoribanks and Lall Singh for the plaintiff.

Mokhtar Sidin (Senior Federal Counsel) for the defendants.

Abdul Hamid J.: The plaintiff's claim is for —

- (i) a declaration that his dismissal from the Polis Diraja Malaysia purported to be effected by the Police Force Commission on August 18, 1971 was void;
- (ii) an order that defendants do pay the plaintiff all arrears of pay, allowances and other emoluments due and owing to him as a Sergeant Major in the said Polis Diraja Malaysia from the date of the dismissal; and
- (iii) an account of what is due to the plaintiff from the defendants in respect of his salary and all other emoluments found to be due to him as a Sergeant Major of the Polis Diraja Malaysia and an order for payment by the defendants to the plaintiff of any sum upon checking such account.

The facts are not in dispute. The plaintiff joined the Police Force as a police constable. In February 1968 he was confirmed in the rank of Sergeant Major, a junior police officer and emplaced on the pensionable establishment.

On May 31, 1971 the Minister of Home Affairs acting under section 8(1)(a) of the Internal Security Act, 1960 served upon the plaintiff an order for detention for a period of two years commencing from June 7, 1971 at the Batu Gajah Special Detention Camp.

On representation made by the plaintiff to the Chairman of the Advisory Board on June 6, 1971, the plaintiff was unconditionally released from detention on January 25, 1972.

In July, 1971 whilst in detention the plaintiff received from the Inspector General of Police a letter dated July 5, 1971 requesting him to show cause why he should not be dismissed from the Police Force. The plaintiff forthwith sent a reply showing cause why he should not be dismissed.

The plaintiff was dismissed from the Police Force by the Police Force Commission on August 18, 1971.

At the hearing before me Mr. Marjoribanks counsel for the plaintiff and Encik Mokhtar Sidin, Senior Federal Counsel appearing for the Government of Malaysia and Chairman of the Police Force Commission intimated that no evidence was to be adduced by either party. It was agreed between the parties that —

- (a) plaintiff received a statement in writing sent by the Disciplinary Authority (which is the Police Force Commission as defined under Regulation 2) pursuant to General Order 30(2) of the Public Officers (Conduct and Discipline) (General Orders, Chapter D) Regulations, 1969 — (hereinafter referred to as "the 1969 General Orders");
- (b) the Police Force Commission received a written reply from the plaintiff;
- (c) there was no formal enquiry held; and
- (d) the Police Force Commission was the proper authority with power to dismiss.

A It is the plaintiff's contention that the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations, 1970 (I shall hereinafter refer to these Regulations as "the 1970 Police Regulations") apply to the present case and when the disciplinary action was taken against the plaintiff the procedure laid down under Regulations 3, 4, 5 and 6 should have been followed. It is the plaintiff's further contention that as a result he was deprived of the opportunity to make representation and was not afforded a reasonable opportunity of being heard.

B It is the defendants' case that the plaintiff was dismissed under the 1969 General Orders and was given an opportunity to make representation and to be heard.

C The defendants contended that the power of dismissal under the 1970 Police Regulations was inapplicable and/or inoperative as the power of dismissal was vested solely with the Police Force Commission.

D It is, I think, convenient at this point to examine the Regulations which I think are relevant for purposes of this case. It is not in dispute that at the material time (it still is) the Police Act, 1967 was in force. The Police Act repealed the Police Ordinance, 1952. The Police Regulations, 1952 made under the 1952 Ordinance however, remained in force till they were revoked by the 1970 Police Regulations.

E In May, 1969 the Yang diPertuan Agung being satisfied that immediate action was required for securing public safety, the defence of Malaysia, the maintenance of public order and of supplies and services essential to the life of the community issued pursuant to Article 150 of the Federal Constitution a proclamation of Emergency.

F In July, 1969 the Director of Operations in exercise of the powers conferred upon him under the Emergency (Essential Powers) Ordinance passed the Essential (General Orders, Chapter D) Regulations, 1969 setting out in the Schedule thereto the 1969 General Orders. Section 2 of the Essential (General Orders, Chapter D) Regulations, 1969 suspended the Public Officers (Conduct and Discipline) (General Orders, Chapter D) Regulations, 1968.

G In 1970 the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations, 1970 were made under the Police Act, 1967. At the material time therefore there were the 1970 Police Regulations and the 1969 General Orders that were in force and which could be invoked against the plaintiff in matters affecting conduct and discipline.

H Now, under the Police Act, 1967 section 74, a specific provision is made to the effect that — "All members of the Police Force shall be subject to the provisions of regulations relating to discipline as may from time to time be made by the Yang diPertuan Agung under Article 132(2) of the Federal Constitution or under section 96 of the Act." In terms of that section it seems clear that the plaintiff shall be subject to either the 1970 Police Regulations or the 1969 General Orders.

In passing I would hasten to add that after the Police Act was passed and before the proclamation

of the Emergency, the relevant Disciplinary Regulations applicable to a Sergeant Major were the Police Regulations, 1952 and the 1968 General Orders made under Article 132(2) of the Federal Constitution. The 1968 General Orders provided that insofar as conduct and discipline the provisions of the General Orders shall apply subject to the provisions of the written law applicable to the police officers. The Police Force Commission was, however, the only authority empowered to make an order for dismissal.

The existence of grave Emergency brought about by the May 13 incident posed a threat to the security of Malaysia. Under the Emergency (Essential Powers) Ordinance (No. 1 and No. 2 of 1969) both the executive as well as the legislative powers were vested in the Director of Operations. Laws made by the Director of Operations were called Essential Regulations. It would seem that the primary aim of the Government was to take immediate action to secure public safety and maintain public order. It is in this light that I shall determine the disciplinary procedure applicable to the present case.

I shall commence by considering whether the Police Force Commission had acted properly and rightly in invoking the procedure laid down under General Order 30 of the 1969 General Orders against the plaintiff for the disciplinary offence. Incidentally, Mr. Marjoribanks urged the court to hold that by reason of paragraph 65 of the Schedule to the 1970 Police Regulations which states that —

“Any police officer or constable who —

‘(65) is guilty of any act or neglect of duty, or of any act, conduct or disorder or neglect to the prejudice of good order and discipline, not hereinafter specified’ shall be guilty of an offence”

the plaintiff could have been charged under that paragraph invoking the provisions of the 1970 Police Regulations. With respect I do not share that view. The court is in no position to say whether or not the disciplinary offence committed by the plaintiff could fall under the scope of paragraph 65 of the 1970 Police Regulations. The nature of the offence committed has not been revealed to this court. The court is also in no position to determine whether the plaintiff could or ought to have been charged under the Police Regulations as the grounds upon which the order for the plaintiff's dismissal was made are also not disclosed to the court. The plaintiff could have produced the letter sent to him but he has not done so. And furthermore he does not seem to challenge the validity of the order on either insufficient grounds or for want of grounds.

May I also say that not knowing the exact nature of the allegation, it is impossible for the court to say whether it was an act or neglect of duty, or conduct or neglect to the prejudice of good order or discipline, or otherwise. In other words, the plaintiff has failed to satisfy this court that the Police Force Commission had acted wrongly in not invoking the disciplinary procedure under the 1970 Police Regulations. On the contrary I am satisfied that the Police Force Commission had acted correctly. I mentioned earlier that in regard to a disciplinary offence the plaintiff was, by reason of section 74 of the Police Act, subject to disciplinary action either under the 1970 Police Re-

gulations or the 1969 General Orders. The Police Force Commission had chosen to institute proceedings for disciplinary action against the plaintiff under the 1969 General Orders. This is allowed by law and unless the contrary is shown to the court, it is reasonable to assume that it was a perfectly valid act.

It must also be remembered that to invoke the 1970 Police Regulations the disciplinary offence ought to be one of those specified in the Schedule. It is only when the offence comes within the scope of the Regulations that the charge shall be framed and the procedure laid down therein observed.

In this regard Mr. Marjoribanks seriously argued that the 1970 Police Regulations can live in peaceful co-existence with the 1969 General Orders and in any event the Orderly Room Procedure should have been invoked. He cited the case of *Ridge v. Baldwin*⁽¹⁾ in support of his argument.

I have very carefully examined *Ridge v. Baldwin*, *supra*. In that case a Chief Constable was appointed under section 191 of the Municipal Corporations Act, 1882 by a watch committee. Disciplinary action was taken against the Chief Constable and he was dismissed by the watch committee for negligence in the discharge of his duties.

It was held that the appointment was subject to Police Acts and Regulations. Lord Devlin in the course of his judgment on page 42 said —

“I cannot regard the power of dismissal under article 11(1) of the Police (Discipline) (Deputy Chief Constables, Assistant Chief Constables and Chief Constables) Regulations, 1952, as something distinct from the power of dismissal under section 191 (4), and I think that the effect of article 11 (1) is to make the power of dismissal conditional on the receipt of the report submitted to the police authority by the tribunal appointed under the regulations.”

In that case one of the arguments advanced was that the Police Disciplinary Regulations did not apply and that the Disciplinary Code did not cover the gravamen of the charge against the Chief Constable. It was held that the Disciplinary Code expressly made applicable to the Chief Constable and had therefore to be construed accordingly. At page 137 Lord Devlin referring to the Disciplinary Code said —

“...It contains a number of specific offences which a chief constable could hardly commit, but also a number which he certainly could. There are specific matters put against the appellant in this case which I think certainly fall under the head of ‘discreditable conduct,’ if not also of ‘neglect of duty.’ In my judgment, the Disciplinary Code should be regarded as a compendium covering all ranks from chief constable downwards. I find it impossible to believe that there was intended to be a residue of neglect to be dealt with at large and in relation to which the offender is deprived of the protection afforded by the regulations. If a case of inefficiency or inadequacy can be made without proof of misconduct or neglect, the regulations do not apply; but if the case involves an allegation (and I use that word, as will be seen hereafter in its widest sense) of a disciplinary offence the procedure laid down by the regulations must be followed.”

After observing that one of the grounds given for the appellant's dismissal in that case was the “neglect of duty” Lord Devlin on page 137/8 went on to say that —

“...The watch committee ought not to have reached a decision on this ground without following the regulations, unless it can be said (and this is the second point to be considered) that the regulations are by their own terms inapplicable on the facts of this case.”

It seems clear from the judgment of Lord Devlin that the Police Regulations were to be read into the Act of 1882 as rules that the committee was required to observe.

One of the reasons that led to this finding was because the appointment of the Chief Constable was subject to Police Acts and Regulations. Primarily the finding was arrived at after considering the grounds upon which the watch committee acted. According to Lord Devlin there were specific matters put against the Chief Constable that he thought could fall under the head of "discreditable conduct" if any, and also "neglect of duty."

There is hardly any doubt in my mind that the present case differs in many respects from the case cited. I would emphasize that to determine the Regulations applicable serious consideration must be given to the condition prevailing in this country then. The exact nature of the complaint against the plaintiff had to be taken into account. I do not think it is erroneous to assume that when the Police Force Commission decided to proceed under the 1969 General Orders they did so after giving due consideration to the facts and the circumstances surrounding this particular case. If indeed this was the case it must be deemed that the 1970 Police Regulations cannot by their own terms be said to apply to the case in hand. Clearly it was a matter solely for the Police Force Commission to judge whether in the circumstances the misconduct was one that warranted dismissal. I am of the opinion that disciplinary procedure for misconduct founded upon facts judged in the light of the condition prevailing during the Emergency was not within the scope of the 1970 Police Regulations.

In the circumstances it is evident that the nature of the misconduct was the factor that governed the Commission's decision. This court will not indulge in speculation but it feels certain that in its deliberation the Commission seriously considered the complaint against the plaintiff in the light of the code of conduct expected from a public officer as set out in the 1969 General Orders. As a public officer the plaintiff was required on all occasions to give his undivided loyalty and devotion to the Yang diPertuan Agung, the country and the Government. Whether there was a breach of that code of conduct is strictly a matter of inference. It is not disputed that on May 31, 1971 by order of the Minister of Home Affairs exercising his power under the Internal Security Act, 1960 ordered the plaintiff to be detained. It was during his detention that disciplinary proceedings under the 1969 General Orders were instituted against him.

It shall be recalled that during the Emergency the legislative authority was vested in the Director of Operations. It is not open to the court, even though I do find that the procedure provided under General Order 30(2) falls short of and had not fully complied with the requirement of the rules of natural justice in the sense that he had not been accorded with full opportunity of being heard, to question the wisdom of the law maker. In effect I am even prepared to say that the procedure was somewhat inconsistent with Article 135 of the Federal Constitution but the court cannot ignore that the 1969 General Orders were made

pursuant to section 2 of the Emergency (Essential Powers) Ordinance, 1969 exercisable by the Director of Operations pursuant to section 8 of the Emergency (Essential Powers) Ordinance, No. 2 of 1969. Clause 6 of Article 150 states —

"(6) Subject to Clause (6A), no provision of any ordinance promulgated under this Article, and no provision of any Act of Parliament which is passed while a Proclamation of Emergency is in force and which declares that the law appears to Parliament to be required by reason of the emergency, shall be invalid on the ground of inconsistency with any provision of the Constitution."

I also refer to *Eng Keock Cheng v. Public Prosecutor*⁽²⁾ where it was held that —

"the true effect of Article 150 of the Federal Constitution is that, subject to certain exceptions set out therein, Parliament has, during the emergency power to legislate on any subject and to any effect even if inconsistencies with articles of the Constitution (including the provisions for fundamental liberties) are involved;"

Subsection 4 of section 2 of the Emergency (Essential Powers) Ordinance, 1969 No. 1 of 1969 provides that —

"(4) An Essential Regulation, ... shall have effect notwithstanding anything inconsistent therewith contained in any written law, including the Constitution"

In the light of these provisions the procedure laid down under the 1969 General Orders shall not be held to be invalid on the ground of inconsistency with Article 135 of the Federal Constitution.

Mr. Marjoribanks urged the court to consider the effect of General Order 27 which states that —

"In all disciplinary proceedings under this Part no officer shall be dismissed or reduced in rank unless he has been informed in writing of the grounds on which it is proposed to take action against him and has been afforded a reasonable opportunity of being heard."

I think it is manifestly clear that General Order 27 must not be read in isolation but must be considered subject to General Order 30(2), a special procedure to be followed in a case where the Police Force Commission found an officer guilty of unsatisfactory work or misconduct and such unsatisfactory work or misconduct in the opinion of the Police Force Commission merits dismissal. Fundamentally the procedure laid down in General Order 30(2) is a departure from the established procedure usually followed before the proclamation of Emergency. However, I am unable to hold that such procedure was void and of no effect.

Perhaps I may mention at this point that Article 310 of the Indian Constitution does lay down that the services of a civil employee are at the pleasure of the President or Governor as the case may be and not during good behaviour on the part of the employee and subject to what was contained in Article 311. I may mention at this point that Lord Reid in *Ridge v. Baldwin*, *supra*, speaking of the category of persons holding office at pleasure said at page 65 —

"Then there are many cases where a man holds an office at pleasure. Apart from judges and others whose tenure of office is governed by statute, all servants and officers of the Crown hold office at pleasure, and this has been held even to apply to a colonial judge (*Terrel v. Secretary of State for the Colonies*).⁽³⁾ It has always been held, I think rightly, that such an officer has no right to be heard before he is dismissed, and the reason is clear. As the person having the power of dismissal need not have anything against the officer, he need not give any reason. That was stated as long ago as 1670 in *Rex v. Stratford-on-Avon Corporation*,⁽⁴⁾ where the corporation dismissed a town clerk who held office *durante bene placito*. The leading case of this matter appears to be

Reg. v. Darlington School Governors⁽⁵⁾ although that decision was doubted by Lord Hatherley L.C. in *Dean v. Bennett*,⁽⁶⁾ and distinguished on narrow grounds in *Willis v. Child*.⁽⁷⁾ I fully accept that where an office is simply held at pleasure the person having power of dismissal cannot be bound to disclose his reason. No doubt he would in many cases tell the officer and hear his explanation before deciding to dismiss him. But if he is not bound to disclose his reason and does not do so, then, if the court cannot require him to do so, it cannot determine whether it would be fair to hear the officer's case before taking action."

Now, the relevant portion of Article 311 of the Indian Constitution runs as follows—

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State

(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry;

Provided that this clause shall not apply—

(a)

(b)

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

In India the position of a civil employee in the light of proviso (c) to Article 311(2) is as summarised by the learned author in "Disciplinary Action against Government Servants and its Remedies, 3rd. ed." — D. K. Srivastava, page 62 —

"As a result of proviso (c) to Article 311(2) and Article 310 of the Constitution, the President is now free to remove or dismiss a person holding a civil service under the Union at his pleasure and can even deprive him of the guarantee embodied in clause (2) of Article 311 in respect of the opportunity to defend himself against such dismissal or removal provided the President is satisfied that in the interest of the security of the State it is not expedient to give that person such an opportunity."

Although there is no provision similar to proviso (c) of Article 311 in our Constitution, it is however clear that under our Constitution every person who is a member of any of the services mentioned in paragraphs (a) to (f) of Article 132(1) holds office during the pleasure of the Yang diPertuan Agung. Hence a law made during the Emergency for purposes of protecting the interest of the security of the country passed under the Emergency (Essential Powers) Ordinance although the effect may be to deprive an officer of the guarantee embodied under Article 135(2) so long as the dismissal is made by the appropriate Commission empowered under the Constitution, even though no enquiry is held, is perfectly valid and effective.

In my judgment the claim must necessarily fail. I therefore dismiss the claim with costs.

Claim dismissed

Solicitors: *Lovelace & Hastings.*

NATIONAL INSURANCE CO. LTD. v. S. JOSEPH

[O.C.J. (Yong J.) October 1, 1973]

[Kuala Lumpur — Civil Suit No. 1463 of 1969]

Insurance — Contract uberrimae fidei — Non-disclosure of material facts — Right of insurer to have policy declared void — Agent of insurance company filling proposal form — Agent not acting within scope of his authority — Insurance Act, 1963, s. 16(4).

B In this case the plaintiffs applied for an order to declare void a policy of insurance granted to the defendant in respect of his motor car on the ground of his misrepresentation and non-disclosure of material facts. It was alleged that in answer to questions in the proposal form the defendant had stated that no company had cancelled his policy of insurance in respect of any motor vehicle controlled or owned by him and that he had not met with any accident whilst driving when in fact the defendant had taken out a policy of insurance which had been cancelled as a result of a motor accident involving his car.

Held: (1) since the defendant had declared in his proposal form that the particulars given were true, it was his duty to see and to ensure that the answers were correctly inserted before he signed it. By signing it he would be taken to have read and adopted them;

D (2) an agent of an insurance company who fills up a proposal form and completes it with false and untrue particulars for the purpose of getting the policy of insurance for the applicant and a commission for himself, is not acting within the scope of his authority and in so doing is not acting as the agent of the insurance company;

E (3) on the facts, the defendant had not disclosed to the plaintiffs or their agent that he had a policy of insurance which had been cancelled nor did he disclose to them that he has had a motor accident. The plaintiffs were therefore entitled to an order declaring the policy of insurance void.

Cases referred to:-

(1) *Biggar v. Rock Life Assurance Co.* [1902] 1 K.B. 516, 524.

(2) *New York Life Insurance Co. v. Fletcher* 117 U.S. 519.

F (3) *Bawden v. London, Edinburgh and Glasgow Insurance Co.* [1892] 2 Q.B. 534.

(4) *Newsholme Brothers v. Rock Transport and General Insurance Co.* [1929] 2 K.B. 356, 364 and 375.

(5) *Levy v. Scottish Employers' Insurance Co.* 17 Times L.R. 229.

(6) *M'Millan v. Accident Insurance Co.* [1907] S.C. 484.

(7) *Life and Health Assurance Association v. Yale* (1904) 6 F. 437.

G (8) *Taylor v. Yorkshire Insurance Co.* [1913] 2 I.R. 1.

(9) *Carter v. Boehm* (1766) 3 Barr. 1905, 1909.

(10) *Rozanes v. Bowen* (1928) 32 Ll.L. Rep. 98 (102).

(11) *Brownlie v. Campbell & Others* (1880) 5 App. Cas. 925, 954.

CIVIL SUIT.

R. K. Nathan for the plaintiffs.

H *David Ng Kim Seng* for the defendant.

Yong J.: In this case the plaintiffs ask for an order to declare void the policy of insurance granted by them to the defendant in respect of defendant's car BL9065 on the ground of his misrepresentation and non-disclosure of material facts. In the proposal form there were a number of questions which the defendant had to answer before plaintiffs would consider the defendant's application for insurance. In paragraph 5 of the proposal form the defendant was asked whether any company had cancelled his policy of insurance in respect of any motor vehicle controlled or owned by him. In paragraph 6, he was asked whether he had at any time met with an accident whilst driving, whether he had made any claim, and whether he was